



Canadian Nuclear
Safety Commission

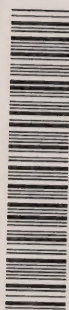
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**Standards for
Regulatory Documents**

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1.0 PURPOSE

This document is intended to help staff and contractors of the Canadian Nuclear Safety Commission (CNSC) produce regulatory documents of consistent and acceptable quality.

2.0 SCOPE

The document describes and explains the corporate standards that CNSC regulatory documents must satisfy in order to be approved for publication. Section 3.0 provides introductory background, section 4.0 lists the standards, and section 5.0 explains and provides guidance on each standard.

3.0 BACKGROUND

The application of corporate standards during the development of CNSC regulatory documents helps ensure final documents of consistent and acceptable quality. The quality of regulatory documents is important because the CNSC uses them to help achieve its objects, and the purpose of the *Nuclear Safety and Control Act (NSC Act)*.

The CNSC, through exercise of the powers laid out in section 21 of the *NSC Act*, may disseminate objective scientific, technical and regulatory information concerning its activities. The issuance of regulatory documents is one of the means by which the CNSC disseminates such information.

Like the mandate of the CNSC, its regulatory documents encompass a broad range of subject matter and use. Some documents, when appropriately incorporated into a licence, establish regulatory requirements. Others describe CNSC regulatory policies, or provide regulatory guidance, advice, information or notice to licensees or the public.

The document standards that are described in the following sections require technical, editorial and legal soundness, and take into account federal legislation, policies, and guidance, and national and international practices.

4.0 THE STANDARDS

The corporate standards for a CNSC regulatory document are:

- **legislative authority**

The purpose and scope of the regulatory document must be within the authority of the *Nuclear Safety and Control Act* and its regulations. In addition, the document must take into account any other relevant legislation of the federal government.

- **consistency with policies**
The regulatory document must be consistent with the policies of the federal government and those of the CNSC.
- **legal soundness**
The regulatory document must be legally sound — well-founded, correct, complete, prudent and fair.
- **technical soundness**
The regulatory document must be technically sound — correct, complete and useful for its intended purpose.
- **editorial soundness**
The regulatory document must be editorially sound — relevant, correct, clear, objective, consistent, logical, and easily understandable to the intended audience.

5.0 UNDERSTANDING THE STANDARDS

The five corporate standards for CNSC regulatory documents are explained below. The explanations are supported by the examples or references that are contained in the appendices to this document.

The individual document standards are interdependent, and cannot be effectively applied in isolation of one another. For example, the editorial quality of a regulatory document can affect both its technical soundness and its legal soundness. A document that is not editorially sound is typically incomplete, incorrect, unclear, inconsistent or contradictory in some respect. Such deficiencies can give rise to inconsistent, incorrect or conflicting legal or technical interpretations of the document's purpose or content, thereby leaving the document and the CNSC vulnerable to related challenges.

The legislative authority and legal soundness standards are similarly linked. If the content and intended use of a regulatory document are to be legally sound and defensible, they must be based on an appropriately-relevant authority in legislation or regulations.

Accordingly, to assure that regulatory documents are of acceptable overall quality, the following standards must be applied as a complementary suite of interdependent requirements.

5.1 The legislative authority standard

The purpose and scope of the regulatory document must be within the authority of the *Nuclear Safety and Control Act* and its regulations. In addition, the document must take into account any other relevant legislation of the federal government.

The legislative authority standard helps assure that individual CNSC regulatory documents are legally sound, and that they align with the objectives of the corporate regulatory documents program. The program includes regulatory documents to inform users and the public about the regulatory requirements and expectations that arise from the authorities in the *NSC Act* and its subordinate instruments, such as regulations and licences.

A regulatory document, to help demonstrate that it meets the legislative authority standard, should cite the legal authorities for its content and proposed regulatory use, and should clearly, expressly, and appropriately link this content and intended usage to the cited authorities.

To fully satisfy the legislative authority standard, a CNSC regulatory document must respect or take into account all relevant federal legislation, including any relevant federal legislation besides the *NSC Act* and its subordinate instruments. This additional legislation should typically be identified and taken into account during the early stages of document development. It could be relevant to one regulatory document, to several regulatory documents, or to all CNSC regulatory documents.

For example, the *Statutory Instruments Act*, the *Archives Act*, and the *Official Languages Act* are federal laws that are broadly relevant to CNSC regulatory documents. The *Canadian Environmental Assessment Act* is an example of federal legislation that could be relevant to specific CNSC regulatory documents, such as one that discusses the CNSC licensing process, or one that deals with the assessment of the environmental impacts of CNSC-licensed activities.

Appendices A, B and C identify or describe some federal legislation or federal legislative content that may need to be considered when evaluating whether a specific CNSC regulatory document complies with the legislative authority standard. Appendix A consists of extracts from the *NSC Act* that relate to its preamble and purpose, and the objects of the CNSC. Appendix B lists statutory instruments administered by the CNSC. Appendix C provides examples of federal legislation, other than the *NSC Act* and its regulations, that may need to be taken into account in a regulatory document.

5.2 The consistency with policies standard

The regulatory document must be consistent with the policies of the federal government and those of the CNSC.

As a federal agency, the CNSC is subject to a number of federal, non-CNSC policies that affect — direct, guide or influence — the administration and discharge of its mandate. Some of these policies can impact the production, content and publication of CNSC regulatory documents. An important example of such a policy is *Government of Canada Regulatory Policy 1999*, issued by the federal Special Committee of Council. The policy is fundamental to the operations of federal regulatory agencies like the CNSC. Other federal policies that impact, or can impact, on the CNSC and its regulatory documents include those policies that address such issues as consultations with the public, the management of government information holdings, the conducting of environmental assessments, the use of official languages, and the rights of persons, including rights related to regulatory fairness, privacy or confidentiality, and access to government information.

Appendix D lists some federal, non-CNSC policies and guides that the CNSC may need to take into account when producing its regulatory documents.

Since the development of CNSC regulatory documents is a corporate commitment, the documents are subject to the relevant corporate policies. Typically, these corporate policies augment or complement, and are consistent with, the other policies of the federal government.

Appendix E lists some of the CNSC policies that are to be taken into account when developing a CNSC regulatory document.

5.3 The legal soundness standard

The regulatory document must be legally sound — well-founded, correct, complete, prudent and fair.

In order to be legally sound, a regulatory document must satisfy interrelated criteria. It must be well founded, correct, complete, prudent and fair. To comply with these criteria, the document must be authoritatively-based and legally correct with respect to the relevant legislation. The document must be prudent,

in terms of the legal risks that could be associated with its publication and use. These risks must be acceptable to the federal government and the CNSC. That is, the document must be sufficiently correct, thorough and unambiguous that the legal interests of the CNSC and the federal government are protected. In addition, the document must respect the principles of administrative law, where they apply. These principles could be relevant to certain regulatory documents, such as one that describes how the CNSC will make a regulatory decision.

The Legal Service Unit (LSU) reviews regulatory documents at key stages of their development, to assure that they satisfy legal requirements. As an independent advisory body that is seconded from the Department of Justice, LSU provides both case-specific and generic legal advice to CNSC staff and management. Before a regulatory document may be issued for consultation, trial use, or final publication, CNSC procedures require staff to obtain an LSU review of the document, in order to assure that the document is legally acceptable for release.

Appendix F discusses principles of administrative law, and how and why these principles should be taken into account during the development of CNSC regulatory documents.

Appendix G provides an example of LSU advice on the legal implications of using certain terms, such as “ensure” and “must”, in CNSC regulatory documents.

5.4 The technical soundness standard

The regulatory document must be technically sound — correct, complete and useful for its intended purpose.

The CNSC assures that its regulatory documents are technically sound — correct, complete and useful — through implementation of a CNSC-administered development and review process. This process provides for the planning and inputs that are necessary in order to establish and adjudicate the technical content of a regulatory document. In particular, the technical specifications for a regulatory document are defined at the outset of a document development project, and incorporated into its document production plan. In addition to describing the technical content of the proposed document, the document plan identifies the relevant sources of specialist expertise, including any assigned technical authority.

5.5 The editorial soundness standard

The regulatory document must be editorially sound — relevant, correct, clear, objective, consistent, logical, and easily understandable to the intended audience.

To achieve their purposes, written communications must be editorially sound. Accordingly, the federal government's *Communications Policy* encourages federal organizations to communicate effectively, by providing information that is relevant, clear, objective and easy to understand. This policy applies to both regulatory and non-regulatory activities, and is especially important to the communication of regulatory information.

The federal government publications, *Plain Language, Clear and Simple*, and *The Canadian Style: A Guide to Writing and Editing*, provide some useful tips on writing clearly, simply, and effectively. In addition to describing the characteristics and advantages of “plain language writing”, these references provide guidance on how to adopt a consistent writing style that focuses on the needs of readers.

APPENDIX A
EXTRACTS FROM THE *NUCLEAR SAFETY AND CONTROL ACT*

The preamble

The preamble includes the following text:

“WHEREAS it is essential in the national and international interests to regulate the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information;

AND WHEREAS it is essential in the national interest that consistent national and international standards be applied to the development, production and use of nuclear energy;”

The purpose

The purpose, as stated in section 3, is “to provide for

- (a) the limitation, to a reasonable level and in a manner that is consistent with Canada’s international obligations, of the risks to national security, the health and safety of persons and the environment that are associated with the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information; and
- (b) the implementation in Canada of measures to which Canada has agreed respecting international control of the development, production and use of nuclear energy, including the non_proliferation of nuclear weapons and nuclear explosive devices.”

The objects of the Commission

The objects of the Commission, as stated in section 9, are:

- “(a) to regulate the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information in order to
 - (i) prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use,
 - (ii) prevent unreasonable risk to national security associated with that development, production, possession or use, and
 - (iii) achieve conformity with measures of control and international obligations to which Canada has agreed; and
- (b) to disseminate objective scientific, technical and regulatory information to the public concerning the activities of the Commission and the effects, on the environment and on the health and safety of persons, of the development, production, possession and use referred to in paragraph (a).”

APPENDIX B

STATUTORY INSTRUMENTS ADMINISTERED BY THE CNSC

Some examples of statutory instruments administered by the CNSC:

Legislation

1. *Nuclear Safety and Control Act*
[SC 1997, ch.9]
2. *Nuclear Liability Act*
[R.S., 1985, c. N-28]

Statutory Instruments Under the *Nuclear Safety and Control Act*

1. *Canadian Nuclear Safety Commission By-laws*
[SOR/2000-212]
2. *Canadian Nuclear Safety Commission Rules of Procedure*
[SOR/2000-211]
3. *General Nuclear Safety and Control Regulations*
[SOR/2000-202]
4. *Radiation Protection Regulations*
[SOR/2000-203]
5. *Class I Nuclear Facilities Regulations*
[SOR/2000-204]
6. *Class II Nuclear Facilities and Prescribed Equipment Regulations*
[SOR/2000-205]
7. *Uranium Mines and Mills Regulations*
[SOR/2000-206]
8. *Nuclear Substances and Radiation Devices Regulations*
[SOR/2000-207]
9. *Packaging and Transport of Nuclear Substances Regulations*
[SOR/2000-208]
10. *Nuclear Security Regulations*
[SOR/2000-209]
11. *Nuclear Non-proliferation Import and Export Control Regulations*
[SOR/2000-210]
12. *Order Fixing May 31, 2000 as the Date of the Coming into Force of the Act*
[SI/2000-42]

Statutory Instruments Under the *Atomic Energy Control Act* still in effect

1. *AECEB Cost Recovery Fees Regulations, 1996*
[SOR/96-412]
2. *Uranium Mines (Ontario) Occupational Health and Safety Regulations*
[SOR/84-435]

APPENDIX C

FEDERAL GOVERNMENT LEGISLATION

Document standards must be interpreted and applied in accordance with the laws of Canada. Some examples of the federal legislation that could be relevant to a CNSC regulatory document are:

1. *Statutory Instruments Act*
[R.S. 1985, c. S-22]
2. *Statutory Instruments Regulations*
[C.R.C. c 1509]
3. *Official Secrets Act*
[R.S. 1985, c. O-5]
4. *Official Languages Act*
[R.S. 1985, c. 31, 4th Supp.]
5. *Communication With and Services To the Public Regulations*
[SOR/92-48]
6. *Privacy Act*
[R.S. 1985, c. P-21]
7. *Privacy Regulations*
[SOR/83-508]
8. *Access to Information Act*
[R.S. 1985, c. A-1]
9. *Access to Information Act Officers or Employees of the Atomic Energy Control Board Designation Orders*
[SOR/86-360]
10. *Access to Information Regulations*
[SOR/83-507]
11. *Security Offences Act*
[R.S. 1985, c. S-7]
12. *Copyright Act*
[R.S., 1985, c. C-42]
13. *Copyright Regulations*
[SOR/97-457]
14. *Canadian Environmental Assessment Act*
[S.C. 1992, c. 37]
15. *Transportation of Dangerous Goods Act, 1992*
[S.C. 1992 c. 34]
16. *Transportation of Dangerous Goods Regulations*
[SOR/85-77]
17. *Canada Labour Code*
[R.S. 1985, c. L-2]

18. *Canada Labour Standards Regulations*
[C.R.C., c. 986]
19. *Canada Health Act*
[R.S.1985, c. C-6]

APPENDIX D

FEDERAL GOVERNMENT POLICIES AND GUIDES

Policies

Federal government policies direct or guide government institutions with respect to a given subject, thereby influencing the institutions' decisions or actions on related matters.

Some federal policies that could be relevant to a CNSC regulatory document are:

1. *Government of Canada Regulatory Policy* (1999)
2. *Official Languages Policies*
3. *Management of Government Information Holdings Policy* (1994)
4. *Government Communications Policy* (1996)
5. *Federal Identity Program* (1995)
6. *Cabinet Directive on Law-Making* (1999)

Guides

The federal government provides guidance, typically in the form of descriptions of “best practices”, to help federal agencies and institutions carry out government policy efficiently and effectively.

Some federal guides that could be relevant to a CNSC regulatory document are:

1. *Assessing Regulatory Alternatives* (1994)
2. *Benefit-Cost Analysis Guide for Regulatory Programs* (1995)
3. *Consultation Guidelines for Managers in the Federal Public Service* (1992)
4. *Enlightened Practices in Regulatory Programs* (vol.1, 1993)
5. *Enlightened Practices in Regulatory Programs* (vol. 2, 1994)
6. *Guide to the Regulatory Process* (2001)
7. *Federal Regulatory Process Management Standards : Compliance Guide* (1996)
8. *Framework for Managing Regulatory Programs* (1992)
9. *Managing Regulation in Canada: Regulatory Reform and Regulatory Process* (1996)
10. *Memoranda to Cabinet: a Drafter's Guide* (2000)
11. *Reference Material — The Law Making Process* (1999)
12. *Regulatory Cooperation Between Governments* (1994)
13. *RIAS Writer's Guide* (1992)
14. *Technical Guide to Regulatory Impact Analysis* (1994)

APPENDIX E CORPORATE POLICIES

A number of corporate policies affect the definitions, use, development and substance of the CNSC's regulatory documents.

Some examples are:

1. Board Member Document 94-141: *AECB Policy on Regulatory Documents* (August, 1994)
2. Board Member Document 95-169: *Revision of the Policy Statement on the Regulation Making Process of the Atomic Energy Control Board* (December, 1995)
3. Notification N95-1: *Regulatory Documents System Policy of the President of the AECB* (April 24, 1995)
4. *The Classification of AECB Regulatory Guidance Documents* (Approved by Executive Committee in July, 1996)
5. CNSC Management Charter / Regulatory Philosophy
6. Memoranda of Understanding with other organizations (e.g., Transport Canada, Health Canada, the Province of Saskatchewan, Environment Canada, and the International Atomic Energy Agency)

APPENDIX F

PRINCIPLES OF ADMINISTRATIVE LAW

Administrative law and the CNSC

Administrative law is the area of law that focuses on how legal powers or authorities are established and exercised. These powers and authorities include those of decision-makers such as the CNSC.

Within the arena of administrative law in Canada, some legal principles that are relevant to the CNSC have developed over time. These principles and their bounds of application, have been established by court decisions. Accordingly, the CNSC operates within a formal legal framework that includes the *Constitution Act*, the *Canadian Charter of Rights and Freedoms*, laws such as the *Nuclear Safety and Control Act (NSC Act)* and its regulations, other federal laws, and associated principles of administrative law. The CNSC must respect the bounds of its authority within this legal framework, and must act within the associated bounds, including any constraints, criteria or limits on its powers. If the CNSC fails to respect its legislated authority, it could be subject to legal consequences. In addition to respecting the express provisions of the *NSC Act* and its regulations, the CNSC must respect relevant legal principles that have been established by the courts. Should the CNSC fail to respect or to take these established principles into account when making a decision, the persons who are affected by the decision might use this failure as a legitimate grounds for seeking legal redress.

Three principles of administrative law that apply to the decision-making activities of the CNSC are:

1. *A decision-maker must act within its legal authority when making a decision.*

A decision-maker, such as the CNSC, may only act within its legal authority. If a decision-maker acts without legal authority, or exceeds its authority, its decision may be struck down.

2. *A decision maker must act fairly when making a decision that affect the rights, privileges or interests of a person.*

A decision-maker, such as the CNSC, must act fairly when making a decision that affects the rights, privileges or interests of a person. It must act with “procedural fairness”, in accordance with principles that are sometimes called “principles of natural justice”. As discussed below, these principles encompass such things as the related rights of persons who may be affected by a decision.

3. *A decision-maker must act reasonably when making a decision that affect the rights, privileges or interests of a person.*

In accordance with this principle, a decision-maker, when making a decision that affects the rights, privileges or interests of a person, must act reasonably on the basis of the available information. If the decision maker does not act reasonably on the basis of the available information — for example, if the decision-maker makes a decision on the basis of errors in facts, or an unreasonable interpretation of the available information — the decision could be considered to be “perverse” or “capricious”, and held to be invalid.

Regulatory documents and administrative law

During the development of a CNSC regulatory document, CNSC staff and legal advisers typically review the document to assure that its proposed content and application meet legal requirements, including the necessary respect for principles of administrative law.

The legislative authority standard for CNSC regulatory documents also takes into account the principle of administrative law that requires the CNSC to act within its legal authority. The standard requires the purpose and subject matter of a CNSC regulatory document to be within the scope and authority of the *NSC Act* and its regulations, and to be consistent with any other relevant legislation or requirements of the federal government.

To assure that a regulatory document meets the legislative authority standard, the CNSC requires that the document identify clearly those parts of legislation or other statutory instruments on which the information in the document is based. This explanation helps the users and readers of the document understand how the information in the text of the regulatory document relates to its regulatory authority. This link is an important element of a regulatory document, given the scope and complexity of the *NSC Act*, its subordinate legislation and other powers concerning licensing and orders. It provides an essential justification and validation for the expectations of the CNSC, particularly in its compliance promotion activities.

The legal principles of procedural fairness or “natural justice” have been established in court decisions and are often, in time, reflected in legislation. They include the right of a person affected by a decision to have the decision made by an impartial decision-maker, and to have an adequate opportunity to be heard before a decision that affects the person’s interests is made. This also implies a reasonable notice of an impending decision, with sufficient time and information to prepare a response. The requirements of fairness depend on the circumstances and consequences of the decision.

Non-binding regulatory documents are subject to the “fairness” principle somewhat differently than regulatory requirements because these documents are not, in and of themselves, legally-enforceable. Typically, no interest of the individual is affected by simply publishing the document. However, regulatory guides must be clear enough so that persons affected by the CNSC’s expectations understand those expectations and can provide responses or information or participate in the process as appropriate. If a document is not clear enough to do this, there may

be a legal basis for a complaint on fairness grounds. In addition, if the document is made into a binding instrument — by incorporating a regulatory standard into a licence condition for example — care must be taken during its development so that it is suitable for compliance assessment and that the actions described in the document are completely acceptable to the CNSC as meeting regulatory requirements.

The principle of administrative law that requires a decision-maker to act reasonably when making a decision that affects the rights, privileges or interests of a person, is an important one for decision-makers and stakeholders that use regulatory documents. For example, by indicating the type of information that is relevant to a CNSC decision, or the reasons why the CNSC needs the information, regulatory policies and guides can help the CNSC avoid factual errors. In addition, they can help regulated persons determine, on the basis of the information provided, how the CNSC intends to act in certain circumstances.

The CNSC must write its regulatory policies or guides in such a way that they do not purport to fetter the discretionary nature of a decision making power. The documents may explain or interpret regulatory requirements or expectation for compliance, but should not preclude other ways of complying with the requirements or expectations.

APPENDIX G

LANGUAGE USE IN REGULATORY DOCUMENTS

The use of “ensure”

Avoid the use of **ensure** in Canadian Nuclear Safety Commission (CNSC) regulatory documents unless you intend to impose or describe an obligation of result. To **ensure** something is to guarantee that it will happen, not merely to take reasonable measures to see that it does.

The *NSC Act* does not require the CNSC to **ensure** — that is, to guarantee — nuclear safety. It only requires the CNSC to prevent “unreasonable risk” to the environment and the health and safety of persons.

The following is an example of the appropriate use of **ensure** in a regulatory policy that applies to the CNSC:

“When regulating, regulatory authorities must **ensure** that [...] Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs.” [*Government of Canada Regulatory Policy*, 1999]

The following is an example of the appropriate use of **ensure** in a regulatory guide:

“Periodic reviews of financial guarantees for decommissioning will be required by the CNSC and the licensee to **ensure** that these financial guarantees remain adequate, or to justify changes in their value.” [Regulatory Guide G-206]

The use of imperative language

Terms such as **require**, **requirement**, **must** and **shall** can be used to correctly describe or refer to obligations, such as those imposed by legislation or licence conditions. When describing or referring to non-imperative recommendations (such as found in policies, guidelines, recommendations or practices), use references that are also non-imperative in nature — such as “recommended practice” or “should”.

An example of the appropriate use of imperative language in a regulation:

“Every licensee who stores a nuclear substance **shall** post and keep posted, in a readily visible location[....]” [*Nuclear Substances and Radiation Devices Regulations*, Section 23]

